

Delhi High Court

J.P. Agrawal vs Union Of India & Ors on 4 August, 2011

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 4th August, 2011

+ W.P.(C) 7232/2009

J.P. AGRAWAL Petitioner

Through: Mr. Anurag Goel, Adv.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Rishi Dewan, Adv. for R-4.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may Yes be allowed to see the judgment?
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported Yes in the Digest?

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the order dated 16 th January, 2009 of the Central Information Commission (CIC) imposing penalty under Section 20 of the Right to Information Act, 2005 on the petitioner of `12,500/- deductible in two installments of `6,250/- each from the salary of the petitioner starting from 3rd March, 2009. The petition though came up before the Court first on 2 nd March, 2009 but no stay was granted. The petitioner on 14th December, 2009 informed that penalty amount had been paid to the CIC and further submitted that the fault leading to the imposition of penalty was not in his functioning as the Public Information Officer (PIO) of the

DDA but of Mr. S.C. Gupta the then Dy. Director (Housing) of the DDA. I may notice that the CIC has vide the impugned order, while levying penalty of `12,500/- on the petitioner, levied penalty of `12,500/- on the said Shri S.C. Gupta also and deductible from his salary. On the said contention of the petitioner, the said Shri S.C. Gupta was impleaded as respondent no.4 to the petition and in fact he alone has been served with the notice of the petition. Shri S.C. Gupta has filed a counter affidavit. The counsel for the petitioner and the counsel for the respondent no.4 Shri S.C. Gupta have been heard.

2. It is the case of the petitioner that he, as PIO of the DDA had acted with promptitude and had on the very next day of receiving the RTI application, sought information from the respondent no.4 and the delay in providing information was of the respondent no.4. It is further the case of the petitioner that in pursuance to the directions of the First Appellate Authority to provide further information also, the delay in providing the same was of the said Shri S.C. Gupta.

3. The CIC however has in the order dated 16 th January, 2009 impugned in this petition held that it had in the earlier order dated 26 th September, 2008 (which is not before the Court) held that it is the not the delay in response for which the petitioner had been held liable but the petitioner had failed to provide the information sought and had simply forwarded a report to the information seeker without caring to examine whether the report even addressed the information sought. It was thus held that the petitioner had abdicated his responsibility as PIO. It was further held that the petitioner as the PIO of the DDA was responsible for providing the information and had failed to apply his mind as to what information was sought and what was being passed on. The said conduct of the petitioner was held to be amounting to deemed refusal of information. The petitioner has however in the writ petition failed to address the grounds on which the maximum penalty leviable under the Act had been apportioned between him and Shri S.C. Gupta and has merely reiterated that the responsibility was of Shri S.C. Gupta.

4. It is not in dispute that the petitioner was the designated PIO under Section 5 of the Act of the DDA. Under Section 5(3) of the Act it was for the petitioner to deal with the request and render reasonable assistance to the information seeker. The PIO under Section 5(4) is authorized to seek the assistance of any other officer as may be considered necessary for the purpose of providing information and Section 5(5) mandates such officers to render all assistance to the PIO. Section 5(5) also deems such officers from whom information is sought, as the PIO for the purpose of any contravention of the provisions of the Act.

5. The contention of the petitioner appears to be that he as PIO was merely required to forward the application for information to the officer concerned and/or in possession of the said information and to upon receipt of such information from the concerned officer furnish the same to the information seeker. He would thus contend that as long as he as PIO had acted with

promptitude and forwarded the application to the officer in possession of the information and furnished the same to the information seeker immediately on receipt of such information, he cannot be faulted with and the liability for penalty if any has to be of such other officer from whom he had sought the information and cannot be his.

6. The argument aforesaid reduces the office of the PIO to that of a Post Office, to receive the RTI query, forward the same to the other officers in the department/administrative unit in possession of the information, and upon receipt thereof furnish the same to the information seeker. It has to be thus seen from a perusal of the Act, whether the Act envisages the role of a PIO to be that of a mere Post Office.

7. Section 4 of the Act obliges every public authority to publish inter alia the particulars of facilities available to citizens for obtaining information and the names, designations and other particulars of the PIOs. Section 5 requires the public authorities to designate PIO to provide information to persons requesting for information under the Act. Such PIOs, under Section 5(2) of the Act are to receive applications for information and under Section 5(3) of the Act are to deal with request from persons seeking information and render reasonable assistance to the information seekers. The Act having required the PIOs to "deal with" the request for information and to "render reasonable assistance" to the information seekers, cannot be said to have intended the PIOs to be merely Post Offices as the petitioner would contend. The expression "deal with", in *Karen Lambert Vs. London Borough of Southwark* (2003) EWHC 2121 (Admin) was held to include everything right from receipt of the application till the issue of decision thereon. Under Section 6(1) and 7(1) of the RTI Act, it is the PIO to whom the application is submitted and it is he who is responsible for ensuring that the information as sought is provided to the applicant within the statutory requirements of the Act. Section 5(4) is simply to strengthen the authority of the PIO within the department; if the PIO finds a default by those from whom he has sought information, the PIO is expected to recommend a remedial action to be taken. The RTI Act makes the PIO the pivot for enforcing the implementation of the Act.

8. Even otherwise, the very requirement of designation of a PIO entails vesting the responsibility for providing information on the said PIO. As has been noticed above, penalty has been imposed on the petitioner not for the reason of delay which the petitioner is attributing to respondent no.4 but for the reason of the petitioner having acted merely as a Post Office, pushing the application for information received, to the respondent no.4 and forwarding the reply received from the respondent no.4 to the information seeker, without himself "dealing" with the application and/or "rendering any assistance" to the information seeker. The CIC has found that the information furnished by the respondent no.4 and/or his department and/or his administrative unit was not what was sought and that the petitioner as PIO, without applying his mind merely forwarded the same to the information seeker. Again, as aforesaid the petitioner has not been able to urge any

ground on this aspect. The PIO is expected to apply his / her mind, duly analyse the material before him / her and then either disclose the information sought or give grounds for non-disclosure. A responsible officer cannot escape his responsibility by saying that he depends on the work of his subordinates. The PIO has to apply his own mind independently and take the appropriate decision and cannot blindly approve / forward what his subordinates have done.

9. This Court in *Mujibur Rehman Vs. Central Information Commission* MANU/DE/0542/2009 held that information seekers are to be furnished what they ask for and are not to be driven away through filibustering tactics and it is to ensure a culture of information disclosure that penalty provisions have been provided in the RTI Act. The Act has conferred the duty to ensure compliance on the PIO. This Court in *Vivek Mittal Vs. B.P. Srivastava* MANU/DE/4315/2009 held that a PIO cannot escape his obligations and duties by stating that persons appointed under him had failed to collect documents and information; that the Act as framed casts obligation upon the PIO to ensure that the provisions of the Act are fully complied. Even otherwise, the settled position in law is that an officer entrusted with the duty is not to act mechanically. The Supreme Court as far back as in *Secretary, Haila Kandi Bar Association Vs. State of Assam* 1995 Supp. (3) SCC 736 reminded the high ranking officers generally, not to mechanically forward the information collected through subordinates. The RTI Act has placed confidence in the objectivity of a person appointed as the PIO and when the PIO mechanically forwards the report of his subordinates, he betrays a casual approach shaking the confidence placed in him and duties the probative value of his position and the report.

10. Thus no fault can be found with the order of the CIC apportioning the penalty of `25,000/- equally between the petitioner and the respondent no.4.

11. There is thus no merit in the petition; the same is dismissed. No order as to costs.

RAJIV SAHAI ENDLAW

(JUDGE)

AUGUST 4, 2011

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(corrected and released on 2 nd September, 2011)